IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3197 OF 2006

Shri Krishna Madhav Warrier & Anr. ... Applicants.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. A.H.H. Ponda, for the Applicants.
Mr. A.S. Shitole, A.P.P. for the State.

CORAM : A.S. OKA, J.
DATE : 04th SEPTEMBER, 2006.

P.C. :

1. Rule. Learned A.P.P. waives service for the Respondent. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The challenge in this Petition under Article 227 of the Consitution of India read with Section 482 of the Code of Criminal Procedure, 1973 is to the notice dated 19th July 2006 issued by the second Respondent under Section 108(1)(2) of the said Code. One of the contentions raised in this Petition is that there is non-compliance with sub-Section (2) of Section 108 of the said Code. The learned Counsel appearing for the Petitioners submitted that there could not have been initiation of the proceedings as there was no order passed by the State Government as required by sub-Section (2) of Section 108 of the said Code. The learned A.P.P. on instructions of the concerned Officer who is present in the Court states

that there was no specific order passed either by the State Government or by an Officer empowered by the State Government in that behalf under Sub-Section (2) of Section 108 of the said Act.

3. Sub-Section 108 of the said Code reads thus :-

> "(1) When (an Executive Magistrate) of the first class receives information that there is within his local jurisdiction any person who, within or without such jurisdiction, -
>
> (i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of, -
>
> (a) any matter the publication of which is punishable under Section 124-A or Section 153-A or Section 153-B or Section 295A of the Indian Penal Code (45 of 1860), or
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> (b) any matter concerning a Judge or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code.
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> (ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code (45 of 1860),
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> and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.
>
> (2) No proceeding shall be taken under this section against the editor, proprietor, printer or publisher or any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in

such publication **except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf."** (Emphasis supplied)

4. On plain reading of sub-section (2), it is obvious that the proceedings could have been initiated either on the basis of an order passed by the State Government or by some Officer empowered by the State Government in that behalf. In the facts of this case, compliance with sub-Section (2) was the condition precedent for initiating proceeding under Section 108(1) of the said Code. As compliance was not made, it is obvious that the initiation of action under Section 108 (1) of the said Code is bad in law.

(5) Hence, the Petition must succeed on the said limited ground. Accordingly, rule is made absolute in terms of prayer clause (c).

(6) It is made clear that notwithstanding this order, the Respondents will be at liberty to take out appropriate proceedings against the Petitiioners in accordence with the law.

JUDGE